

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN LARRY JENT**, on January 11, 2005 at 8:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Larry Jent, Chairman (D)
Rep. Veronica Small-Eastman, Vice Chair (D)
Rep. Dee L. Brown, Vice Chair (R)
Rep. Mary Caferro (D)
Rep. Sue Dickenson (D)
Rep. Emelie Eaton (D)
Rep. Robin Hamilton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. Hal Jacobson (D)
Rep. William J. Jones (R)
Rep. Gary MacLaren (R)
Rep. Bruce Malcolm (R)
Rep. Alan Olson (R)
Rep. Bernie Olson (R)

Members Excused: Rep. Joan Andersen (R)

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Marion Mood, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 21, 1/5/2005; HB 18, 1/5/2005;
HB 67, 1/5/2005

Executive Action: HB 21 Do Pass; HB 67 Do pass as amended

Note: CHAIRMAN LARRY JENT, HD 64, BOZEMAN, stepped out in order to present a bill in another committee and left VICE CHAIR DEE BROWN, HD 3, Hungry Horse, to chair the committee in his absence.

HEARING ON HB 21

Opening Statement by Sponsor:

REP. DAVE GALLIK, HD 79, HELENA opened the hearing on HB 21, stating that this bill extends the bond validating authority through its effective date, namely upon passage and approval.

Proponents' Testimony:

Steve Bender, Deputy Director, Department of Administration, explained that the department brings forth a "like" bill every two years in order to validate all bonds issued within the previous two years. The Bond Validating Act serves to assure the financial community that the State of Montana stands behind its bonds, and its extension was approved unanimously in the 2003 legislative session.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. BRUCE MALCOLM, HD 61, EMIGRANT, inquired why such a bill was introduced every two years and suggested that the application be made permanent. Mr. Bender contended that legal documents such as this could not be signed and pre-dated and, as an added measure, ratification of the bonds required a conscious legislative decision. REP. GALLIK added that oftentimes, technical issues are involved and a carte blanche authority would not suffice.

Closing by Sponsor:

REP. GALLIK waived closing of HB 21.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 11.1}

Note: Committee stood at recess until 8:45 A.M. to accommodate sponsors. Both REP. A. OLSON and REP. HAL JACOBSON left at 8:30 A.M. to present bills elsewhere.

HEARING ON HB 18**Opening Statement by Sponsor:**

REP. CAROL JUNEAU, HD 16, BROWNING, opened the hearing on HB 18, stating that it came out of the state-tribal affairs interim committee. It extends the duration of the state-tribal Economic Development Commission from the current sunset of June 2005 to June 2007; it also provides for a \$200,000 appropriation for its operation. She advised that the commission counts among its members representatives of Montana's eight tribal nations as well as the coordinator of Indian affairs and a representative of the Department of Commerce. **REP. JUNEAU** stressed the importance of economic development in Montana and especially on the state's Indian reservations. The eight tribal nations must be an active partner with the state in their effort to make the state a better place to live and raise families. This can be achieved by developing sustainable economic strategies to create jobs and businesses which would allow the Indian community to become a positive component of Montana's economy; this is all the more pressing when one considers that the average unemployment rate on the reservations is more than 50% versus 4% for non-reservation communities. She contended that the state-tribal Economic Development Commission could and should be an integral part of this process.

Proponents' Testimony:

Andy Poole, Administrator of the Business Division, Department of Commerce, stated that he had been a member of the commission since 1999; it was created to improve communications between the state and the reservations and to serve as a vehicle promoting economic development in Montana. He pointed to the commission's success and stated its continuation was paramount since it facilitated an understanding of Indian issues.

{Tape: 1; Side: A; Approx. Time Counter: 11.1 - 19}

Evan Barrett, Chief Business Development Officer, Governor's Office of Economic Opportunity, rose in support of HB 18 on behalf of Governor Schweitzer who wants to see an acceleration of economic development on Indian reservations. According to the recent census, there are 65,000 self-identified Native Americans in Montana, representing 7.3% of the population; the average household income is \$22,824 compared with \$33,000 for non-Indians. **Mr. Barrett** contended that due to the involvement of Indian leaders, the commission is an essential element in addressing the issue which Gov. Schweitzer had made a target of economic growth. In closing, he recommended that the committee amend the bill to have a four-year sunset instead of the current

two years so that the current administration may work with the commission continuously.

He proposed a second amendment, namely adding a representative of the Governor's Office of Economic Opportunity to the commission. This would put the size of the commission at 11; a quorum would still be six members but it would ensure that the Office of Economic Development would have an active part in targeting growth and developing strategies. In closing, he added that Gov. Schweitzer had plans for a significant appropriation to the Department of Commerce for economic development on reservations.

Joni Stewart, Montana Economic Developers Association (MEDA), stated her association was made up of over 180 economic development professionals statewide, representing almost every county and tribe in Montana. For years, MEDA has searched for a way to improve communications with the tribes; this bill affords that. She lauded the commission's work over the past few years, stating it has aided MEDA in defining its goals and strategies toward improving quality of life for all Montanans.

REP. MARGARETT CAMPBELL, HD 31, POPLAR, rose in support of HB 18, stating that education is the centerpiece of economic development. The Indian community is working toward developing strategies to improve the economic situation and achieve parity with the rest of the state through economic development summits and the involvement of schools and businesses. She stated that the commission is an important part of the equation because it helps deal with the extreme poverty which carries with it a whole slew of societal problems such as alcoholism, teenage pregnancy, drug abuse and the like.

(**REP. HAL JACOBSON** returned to the meeting room)

REP. NORMA BIXBY, HD 41, LAME DEER, advised that her district encompasses two Indian reservations with differing philosophies on economic development; the Crow tribe favors a coal generation plant and coal bed methane development whereas the Northern Cheyenne favor alternative energy development.

{Tape: 1; Side: B}

REP. BIXBY went on to say that the commission has evolved to the point where her constituents have come to realize the need for it; and with Gov. Schweitzer at the helm, she felt assured that economic development on the state's reservations would be a priority and the commission would be given all the technical support needed to achieve that goal. To illustrate the need for economic development, she contended that while Native Americans pump large amounts of money into the state's economy through

their purchases, most of the money does not stay on the reservations because there are very few businesses.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. GORDON HENDRICK, HD 14, SUPERIOR, inquired of Mr. Barrett why the number of representatives required to constitute a quorum was reduced from seven to six. **Mr. Barrett** replied that it is customary to set a quorum at 50% plus 1 of the membership; and to have seven out of 10 members present at meetings was rare and had presented a barrier to past meetings. **REP. HENDRICK** wondered if this would result in the loss of a tribal representative. **Mr. Barrett** explained it did not change the make-up of the membership, only the number constituting a quorum.

REP. SUE DICKENSON, HD 25, GREAT FALLS, asked Mr. Poole to clarify whether \$200,000 was taken out of the General Fund and put into the State Special Revenue fund to support the commission as the fiscal note indicated. **Mr. Poole** confirmed this and added that the federal money shown is for potential federal grants to further economic development projects.

VICE CHAIR DEE BROWN, HD 3, HUNGRY HORSE, asked Sheri Heffelfinger, Legislative Branch, to shed some light on the issue. **Ms. Heffelfinger** explained that two separate issues come into play in the bill: (1) the transfer of \$200,000 from the General Fund to the Special Revenue Account (transfers mean that the money stays in the State Treasury, and there is no appropriation authority, ergo there is no authority to spend it); (2) Subsection (2) contains the appropriation; e.g., the spending authority, to the state-tribal Economic Development Commission. Referring to the "Technical Notes" she added there was concern that there was \$120,000 of old money in the Special Revenue Account that has not been appropriated; this cannot be spent unless there is a legislative appropriation for it.

{Tape: 1; Side: B; Approx. Time Counter:10.0}

REP. DICKENSON inquired what this money was going to be spent on. **Mr. Poole** explained that from its inception, the money was appropriated so that the commission could assess the economic conditions on Montana's reservations and to allow the hiring of a staff person who would review and access federal grant opportunities for Indian-owned businesses. The latter was never done, and it was only recently that Paul Polzin of the University of Montana was hired to put together a report on the economic status of the reservations.

EXHIBIT(sth07a01)

Likewise, it was important to have a continuing economic analysis of the reservation's contributions to the state. He added that issues regarding legal ownership and such (which could prevent businesses from locating on a reservation) have to be studied as some tribes do not have the same types of laws governing normal bank lending.

REP. BERNIE OLSON, HD 10, LAKESIDE, asked the sponsor why only \$80,000 of the appropriated money was spent during the last biennium. **REP. JUNEAU** deferred the question to **Mr. Poole** who explained it was due to the fact that the commission had been slow in getting off the ground; the work had consisted mostly of meetings and discussions rather than contracting out actual work as is the case now.

REP. B. OLSON wondered if the left over sum of \$120,000 would revert back to the General Fund which **Mr. Poole** confirmed, adding only a legislative appropriation would carry it over.

VICE CHAIR D. BROWN asserted that spending tax payers' money on continuing commissions made her nervous, and she asked Mr. Poole to name five positive things that had come out of the commission in the five years since its inception. **Mr. Poole** stated:

(1) the improved communications between the tribes and the State in terms of economic development projects;

(2) communication between tribes regarding goals and accomplishments;

(3) and (4) reports on economic conditions on Indian reservations by RDS, Inc., and by Paul Polzin, U. of M.; the latter of these was based on the 2000 census -- he pointed to Mr. Polzin's explanation of how both the Bureau of Indian Affairs (BIA) and the Bureau of Labor and Statistics (BLS) calculate reservation unemployment numbers and how they differ as being extremely valuable;

(5) the list of priorities which the commission decided to embark on and accomplish.

Mr. Poole advised that one of the primary objectives was to find funding for tribal business information centers which provide technical assistance to businesses being started up on reservations. Since Montana's reservations have the worst economic numbers, economic development and improvement was paramount but it had to be realistic and logical. Given the reservations' geographic location, it was unrealistic to think businesses would relocate; it was more likely that a tribe would

create and establish their own business. S & K Electronics on the Flathead Reservation is a good example and it illustrates the need for tribal business information centers.

VICE CHAIR D. BROWN asked whether the commission had explored the idea of non-Indian venture capital on the reservation. **Mr. Poole** replied venture capital was not a commodity in Montana's urban centers, let alone on the sparsely populated reservations.

VICE CHAIR D. BROWN wondered if his sole job was to oversee the commission. **Mr. Poole** advised that he is the Administrator of the Business Resources Division with an annual budget of about \$4 million and 35 employees.

CHAIRMAN LARRY JENT, HD 64, BOZEMAN, asked the sponsor if there would be an amendment with regard to the concerns in the technical notes contained in the fiscal note. **REP. JUNEAU** explained that there would be the two amendments proposed by Evan Barrett and asked him to elaborate. **Mr. Barrett** advised that the technical concerns would be taken care of in Appropriations, such as making sure the left-over money was accounted for and integrated with the new appropriation.

REP. B. OLSON wondered why the fiscal note showed a \$2 million federal special revenue fund. **Mr. Poole** explained this was included in case the commission was successful in securing federal grant money which was readily available for Indian programs: should grant money become available it could not be spent without this provision.

REP. BRUCE MALCOLM, HD 61, EMIGRANT, expressed doubt that having three tribal representatives on the commission was enough, seeing that there are seven different tribes.

{Tape: 2; Side: A}

Mr. Poole advised that there were eight tribal representatives on the commission (one from each of the seven federally recognized tribes and one from the Little Shell Tribe of Chippewa Indians); the coordinator of Indian Affairs; a member of the Department of Commerce; and a representative of the Governor's Office of Economic Opportunity, as proposed with the amendment. The change addressed in the bill was to adjust the number required for a quorum from seven to six. He assured **REP. MALCOLM** that for the most part, tribal representation was good and in those instances where it was not, it did not appreciably decrease the value of having the discussions.

REP. GARY MACLAREN, HD 89, VICTOR, ascertained that the commission was five years old which **Mr. Poole** confirmed; it was

initiated in 1999. **REP. MACLAREN** then wanted to make sure that only \$80,000 of the appropriated funds had been spent in the previous two years. **Mr. Poole** replied that he believed \$120,000 remained. **REP. MACLAREN** asked how much money was spent in the first three years of the commission's operation. **Mr. Poole** did not know and promised to supply this information at a later date.

Closing by Sponsor:

REP. JUNEAU closed by stressing the need for economic development on Indian reservations.

HEARING ON HB 67

Opening Statement by Sponsor:

REP. LARRY JENT (D), HD 64, BOZEMAN, opened the hearing on HB 67, stating this bill dealt with updating minor issues in the nation-wide law for state purchasing activities, thus promoting government efficiency. The only real change is the removal of the sunset from the provision authorizing an agency to seek alternative procurement methods such as auction-type methods (online). He advised that Title 18 spelled out a very rigid procedure should the Department of Administration seek an alternative method.

Proponents' Testimony:

Sheryl Olson, Deputy Administrator, General Services Division, Department of Administration, advised that the Montana Procurement Act guides state purchasing of goods and services for all state agencies and is administered by the Department. She reviewed the issues this bill addresses, stressing that bona fide trade secrets and matters of individual safety are not open to public inspection. **Ms. Olson** briefly touched upon an issue which had been subject of a legal battle and declared this bill makes it clear that the state is not obligated to award a contract simply because it had issued a solicitation. In closing, she introduced **Amendment HB006701.ash** which corrects a few drafting errors.

EXHIBIT (sth07a02)

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. B. OLSON asked the bill sponsor whether the stricken statements on Page 5, Lines 21 through 23 addressed a particular

problem. **REP. JENT** deferred the question to Sheryl Olson. **Ms. Olson** explained it was stricken since bids were open to the public and not just to bidders, including employees who were displaced by the hiring from the private sector.

VICE CHAIR D. BROWN wondered why the language in the original bill had not been changed in earlier legislative sessions to reflect the court decision and changes made necessary by other problems. **Ms. Olson** explained that the law concerning requests for proposals (RFP) was changed as soon as the court decision came down but the department failed to correct the problem in the bid law which guides invitation for bids; it did not seem necessary at the time because the department had not dealt with many trade secret issues. HB 67 aims to include that and other issues which may potentially arise.

Closing by Sponsor:

The sponsor closed.

EXECUTIVE ACTION ON HB 21

{Tape: 2; Side: B}

Motion/Vote: **REP. JACOBSON** moved that HB 21 DO PASS. Motion carried unanimously on a voice vote, with REPS. A. OLSON, ANDERSEN and EATON voting aye by proxy.

Motion/Vote: **REP. BROWN** moved that HB 21 BE PLACED ON THE CONSENT CALENDAR. Motion carried unanimously on a voice vote, with REPS. A. OLSON, ANDERSEN and EATON voting aye by proxy.

EXECUTIVE ACTION ON HB 67

Motion: **REP. JACOBSON** moved that HB 67 DO PASS.

Motion: **REP. JENT** moved AMENDMENT HB006701.ASH BE ADOPTED.

Discussion:

REP. JENT asked Ms. Olson to explain the amendment. **Ms. Olson** advised that a bidder is someone who responds to an invitation to bid whereas an offeror responds to a request for proposal (RFP), and they are treated very differently in the law.

Vote: Motion carried unanimously by voice vote, with REPS. A. OLSON, ANDERSEN and EATON voting aye by proxy.

Motion: REP. JACOBSON moved that HB 67 DO PASS AS AMENDED.

Discussion:

REP. DICKENSON asked for an example of a bona fide trade secret. CHAIRMAN JENT contended that the chemical composition of Coca Cola was a classic example of a trade secret. Ms. Olson asserted that the law defines what constitutes a trade secret but that sometimes a company will *claim* a trade secret; they then have to sign an affidavit stating that it complies with all parts of Montana law; if they withhold anything from the public, the company has to pay for the public hearing in the event that it is challenged.

(REP. EATON returned to the hearing room at 10:12 A.M.)

Vote: Motion carried unanimously on a voice vote, with REPS. A. OLSON AND ANDERSEN voting aye by proxy.

REP. HAL JACOBSON, HD 82, HELENA, requested that HB 67 not be placed on the consent calendar so that it may be discussed on the floor. CHAIRMAN JENT agreed since it involved expenditure of public money.

Motion/Vote: REP. B. OLSON moved that HB 67 BE PLACED ON THE CONSENT CALENDAR. Motion failed 15:1 with REPS. A. OLSON and ANDERSEN voting aye by proxy and REP. JACOBSON voting no.

ADJOURNMENT

Adjournment: 10:20 A.M.

REP. LARRY JENT, Chairman

MARION MOOD, Secretary

LJ/MM

Additional Exhibits:

EXHIBIT ([sth07aad0.PDF](#))